

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-213645**DATE:** June 5, 1984**MATTER OF:** Professional Design Services**DIGEST:**

1. Notice of awards given to protester was prompt since given only 2 days after awards were made. In any event, even if notice had been untimely, circumstance would not have affected validity of awards.
2. Protester has not shown that multiple quoting practice allegedly permitted under request for quotations prejudiced government or other quoters.
3. The Service Contract Act places the responsibility for enforcing its provisions on the contracting agency head and the Secretary of Labor, not our Office.
4. Protester contends that a "grandfather" policy--entitling protester to retain its employees once contracting agency let protester's contract expire--was a right created under its expired contract. This question will not be considered because it does not affect the propriety of the protested awards but rather is concerned with a proper interpretation of protester's expired contract.

Professional Design Services (PDS) protests the award of several contracts for temporary support personnel to perform drafting/design work, under request for quotations (RFQ) No. 9903, issued by Lawrence Livermore National Laboratory (LLNL) under the authority of a prime management contract which the Department of Energy (DOE) has with the Regents of the University of California. PDS has described these contracts, as follows:

"The preceding contracts, RFQ 9903, and subsequent awards are for companies to provide temporary personnel to work under the direction and supervision of LLNL. A company must supply personnel to LLNL to have an active contract.

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"LLNL procurement sends manpower requirements to companies who are required to recruit, screen, select personnel to match LLNL's requirements and arrange personal interviews with LLNL drafting supervisors.

"LLNL has an established selection process for determining who is the best person for the position. Selection is not based on the lowest price alone.

"Once an individual is selected by LLNL he is hired by the company that recruited him. The person is then assigned to work at LLNL. LLNL procurement issues a purchase order number for each person before they are allowed to begin work.

"Once assigned LLNL determines when and if they want to terminate an individual's services."

We dismiss in part and deny in part the protest.

As a general rule, our Office does not review the award of subcontracts by government prime contractors. One exception to our policy involves subcontract awards made for DOE by prime management contractors, who operate and manage DOE facilities. AAA Engineering and Drafting, Inc., B-213108, October 11, 1983, 83-2 CPD 442. LLNL is a government-owned, contractor-operated facility operated for DOE by the Regents of the University of California. Since LLNL awarded the contracts in question under authority of the Regents' DOE contract, the protest falls within our subcontract award review policy.

The RFQ required temporary employment contractors to quote a "percentage mark-up" from the University's "straight-time," hourly billing rate for the job classifications described in the RFQ. Awards were made on September 16, 1983, for a contract period beginning on October 1, 1983, and ending on March 30, 1985, to 20 firms which quoted the lowest markup rates. By letters dated September 20, LLNL issued award notices to the successful quoters. Subsequently, by letter dated September 22, LLNL provided all bidders (including PDS) with the names of firms that had received awards. Since PDS was also an incumbent contractor, its employees were advised to return

to PDS for reassignment or, if they desired to continue working for LLNL, to apply for employment at one of the successful temporary employment agencies.

In protest of LLNL's conduct in this procurement, PDS makes the following allegations:

"We were not notified of our loss of contract until five (5) days after new contracts were signed. Our concentrated attempts to determine identities of successful bidders were ignored for eight (8) days.

"LLNL awarded a contract to companies which submitted more than one bid through affiliated concerns or through their own separate divisions. LLNL knew of this during the contract award process.

"LLNL awarded contracts with different liabilities and responsibilities than were stated in the RFQ. The RFQ stated new sellers were responsible for accrued vacation benefits. The awarded contracts provide that the old sellers are responsible for this.

"LLNL provided paid time off and facilities for PDS employees to sign employment agreements with our competitors. This unproductive time will probably be paid for by the Department of Energy. Our employees were harassed by LLNL employees and successful bidders to encourage them to sign employment agreements with designated companies.

"Past contract awards have allowed unsuccessful bidders to retain their employees on a 'grandfather' basis without the need to recruit new personnel. We desire equal treatment."

Notice of Award

Federal Procurement Regulations, 41 C.F.R. § 1-3.103(c) (1982), require that prompt notice of award be given to unsuccessful offerors. LLNL mailed notice of the awards only 2 days after making them. Thus, we consider that this notice to offerors was prompt. In any event, even if the notice had been untimely, this circumstance would not have affected the validity of the award.

Multiple Quoting

DOE reports that there were no RFQ restrictions concerning proposals by affiliates or restrictions that required quoters to submit the names of parent companies. Consequently, affiliated companies could submit separate quotes. Further, LLNL states that it did not award multiple contracts to any parent company through its separate divisions. In any event, we have held that multiple bids by a single interest need not be rejected as long as the bidding was not prejudicial to the government or to other bidders because there are legitimate business reasons that justify multiple bidding. See Aarid Van Lines, Inc.--Reconsideration, B-206080.2, March 15, 1982, 82-1 CPD 239. We think that a similar test should be applied to multiple quoting. PDS has not shown that it or any other quoter was unfairly prejudiced by the quotes that were submitted or the awards that were made--other than the speculation that multiple quoting somehow permitted prejudice. Consequently, we deny this ground of protest.

Treatment of Vacation Benefits

Both the RFQ and the awarded purchase orders provide that vacation benefits "shall carry over from Seller to Seller and accruals of the predecessor Seller shall be assumed by the New Seller." PDS actually is complaining that notwithstanding this provision in the contract, LLNL has not enforced the provision against the new sellers (awardees), and that this lack of enforcement is prejudicial to PDS and other bidders who otherwise would have quoted lower rates had they known of this approach.

The Department reports that the above-quoted provision is "consistent with the regulation of the U.S. Department of Labor" concerning the Service Contract Act and that it is the Department of Labor's ultimate responsibility to decide whether this contract provision has been properly administered. In any event, the Department of Energy reports that it "is currently investigating whether there was any improper administration" of the contract.

The Service Contract Act places the responsibility for enforcing its provisions on the contracting agency head and the Secretary of Labor, not our Office. Consequently, we dismiss this ground of protest.

LLNL's Conduct Toward PDS's Employees

As to this allegation, LLNL states:

"It is LLNL's position that there was no employee harassment of contract labor individuals. LLNL did provide facilities outside the normal working hours so that contract labor employees might meet the new contractors. This was done to provide employees with an opportunity to continue to work at LLNL by employment with the successful bidders. There was no paid time off for these employees and their participation in this program was voluntary. Any transition by a contract labor employee from PDS to another contractor was strictly voluntary."

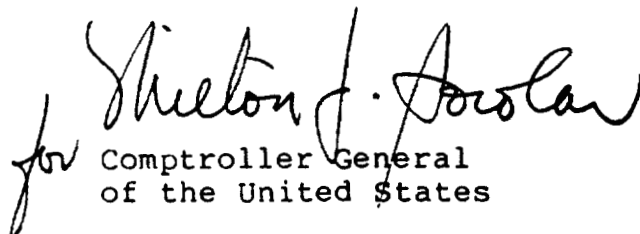
In reply, PDS insists that some of the "time off" was during normal working hours and that PDS's employees who were hired by the new contractors were never "terminated" as promised by LLNL, but continued at LLNL without a break in employment. PDS also alleges that it was improper for LLNL to release the names of its employees for recruitment purposes.

These allegations go to alleged improper practices by LLNL after the contractors had been selected and, therefore, are not relevant to the only issue before us--namely, the propriety of the selection. Consequently, we will not address them.

"Grandfather" Policy

Finally, PDS apparently contends that a "grandfather" policy--entitling PDS to retain its employees in these circumstances--was a right created under its expired contract. This question will not be considered because it does not affect the propriety of the awards in question, but rather is concerned with a proper interpretation of PDS's prior contract--a question which is not cognizable under our bid protest function.

The protest is denied.


for Shulton J. Forlan
Comptroller General
of the United States